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Report of the Special Rapporteur on the situation of human rights in Myanmar*, **

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the situation of human rights in Myanmar, prepared pursuant to Council resolution 31/24. Almost one year since the new Government assumed office, it continues to face formidable human rights challenges. In the report, the Special Rapporteur builds on previous reports to identify some of those challenges and makes relevant recommendations.

* The present report was submitted after the deadline so as to reflect the most recent developments.
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I. Introduction

1. The present report is submitted by the Special Rapporteur on the situation of human rights in Myanmar, Yanghee Lee, to the Human Rights Council pursuant to its resolution 31/24, further to her reports to the Council in March 2016 (A/HRC/31/71) and to the General Assembly in August 2016 (A/71/361). In the present report, the Special Rapporteur addresses the human rights challenges facing the new Government, which assumed power in March 2016, and acknowledges the progress it has made.

2. The Special Rapporteur conducted her fifth official visit to Myanmar from 9 to 20 January 2017.[1] While she requested 14 days, the Government allowed for only a 12-day visit, during which she travelled to parts of Kachin, Mon and Rakhine States, as well as to Yangon and Nay Pyi Taw. The Special Rapporteur expresses appreciation for the Government's cooperation, particularly in respecting her request to meet community members in villages and in camps for internally displaced persons in Rakhine State without close monitoring of state government officials and security personnel. However, she regrets the repeated short-notice responses to her requests to visit specific locations. That was a recurring pattern, with last-minute denials resulting in rearrangement of her programme also at the last minute, thus preventing full optimization of the limited time.

3. From the meetings and conversations held by the Special Rapporteur with the State Counsellor, various government officials and parliamentarians, she acknowledges the genuine commitment and dedication of the Government in its efforts to improve the lives of all in Myanmar. However, that commitment has yet to be fully translated into real actions that are felt on the ground, as evidenced by the feelings of hopelessness that ordinary people have begun to express.

Development of joint benchmarks

4. As mandated by the Human Rights Council in its resolution 31/24, the Special Rapporteur has drafted proposed joint benchmarks for progress (see annex). The draft joint benchmarks were sent to the Government three weeks before her January 2017 visit and were also attached to discussion points sent in advance of her meetings in Nay Pyi Taw. She notes that only two ministries chose to discuss the proposals substantively. She hopes to discuss the proposed benchmarks, and those that may arise from the present report, ahead of her forthcoming country visit in order to agree on joint benchmarks upon which progress can be measured. Also in line with the resolution, the Special Rapporteur sought to identify priority areas for technical assistance and capacity-building; a non-exhaustive list of some areas suggested by interlocutors is included in the recommendations in the present report.

II. Situation of human rights

A. Rule of law

1. Legislative and constitutional reform

5. The Special Rapporteur welcomes the efforts that have been made to repeal or amend legislation that contains provisions that are incompatible with fundamental rights, recalling that she listed many such laws previously (see A/HRC/31/71, annex). She particularly welcomes the repeal in May 2016 of the State Protection Act (1975) and in October 2016 of the Emergency Provisions Act (1950) and the amendments in November 2016 to the Ward or Village Tract Administration Law (2012), removing the compulsory reporting requirement for overnight guests. She also welcomes the removal of the requirement to seek permission for demonstrations, and several other problematic provisions following amendments to the Peaceful Assembly and Peaceful Procession Law

[1] The list of meetings is contained in the annex to the Special Rapporteur's end-of-mission statement. Available at www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21107&LangID=E.

(2011), but notes that criminal sanctions have been retained. She hopes those shortcomings can be addressed.

6. The Special Rapporteur notes the decision to draft a citizens private security and protection law. Potential issues include vague provisions on defamation. While the current draft provides for surveillance with a "warrant in accordance with law", there is currently no such law. She recommends that a legal framework for surveillance be drawn up, in accordance with international standards and in consultation with experts.

7. As the Special Rapporteur has previously highlighted, a strong law on violence against women is urgently needed to address weaknesses in the existing legislative framework. She is concerned by information that the most recent draft of the law on prevention and protection of violence against women has removed key provisions, including those relating to the definition of rape, a special court for gender-based violence, sexual violence in conflict, violence by public officials, and capacity-building for the Attorney-General's Office and the Supreme Court. She calls for those provisions to be reinstated and the law passed immediately.

8. The Special Rapporteur welcomes the provisions in the draft child rights law that increase the compliance of Myanmar with its international obligations. She understands the draft law is likely to be submitted to the parliament in the near future and underlines the importance of retaining key provisions on preventing child recruitment into the armed forces and the minimum age of criminal responsibility.

9. The Special Rapporteur welcomes the decision taken by the Ministry of Home Affairs to begin working on an entirely new text of the draft prison law and hopes it will be in line with relevant international standards and drafted in cooperation with stakeholders. She encourages the Ministry to seek technical assistance in that area.

10. The Special Rapporteur remains concerned about the four laws of the so-called protection of race and religion package adopted in 2015 (see A/HRC/28/72, paras. 28-29). She therefore welcomes comments from parliamentarian Mya Thaung, recognizing that those laws need to be reconciled with the draft law on prevention and protection of violence against women. The Special Rapporteur reiterates that those laws are not in accordance with the international obligations of Myanmar and urges it to rectify their shortcomings.

11. The Special Rapporteur acknowledges the Government's decision to draft a hate speech law that should address incitement to discrimination and violence, while protecting freedom of speech. However, she is concerned that the draft has not yet been open for public consultation, and that several proposed provisions are not in accordance with international standards. She calls for meaningful consultations and revisions to the text to address that, reiterating as a helpful reference the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

12. The Special Rapporteur and her predecessors have previously highlighted that the Citizenship Law (1982) is not in line with international standards (see A/69/398, paras. 12 and 53, and A/HRC/25/64, paras. 49 and 83 (f)), particularly regarding discriminatory provisions for granting of citizenship on the basis of ethnicity or race. On 27 December 2016, the State Counsellor's Office issued a notification detailing the legal basis for, and objective of, the identity card for national verification, a document that is a prerequisite for applying for citizenship if the applicant no longer holds an identity card. While the identity cards for national verification are issued in accordance with the 1949 Registration of Residents Act (and related 1951 rules), the rights accorded to identity card-holders differ from those for persons holding National Registration Cards (three-folded cards) issued under the same Act.

13. In addition to clearly articulating that the identity card for national verification is issued only for the purposes of scrutinizing the eligibility of the holder for citizenship (in accordance with the 1982 Citizenship Law), the notification specifically stated that: (a) card-holders can travel anywhere inside the country in accordance with the regional laws, orders and instructions of their respective state government; (b) card-holders from Rakhine State can travel freely in their resident township and inside Rakhine State in accordance

with regional laws, orders and instructions enacted by the state government; and (c) card-holders from Rakhine State can go to Bangladesh legally with border passes.

14. It should be recalled that following the announcement that all Temporary Registration Cards (White Cards) would expire on 31 March 2015, about 470,000 such cards were surrendered (of about 760,000 originally disbursed). While the highest number surrendered came from Rakhine (almost 400,000), the rest mostly came from Shan, Kayin and Mon States as well as Tanintharyi, Bago and Ayeyarwaddy Divisions. The specificities relating to card-holders residing in Rakhine State are notable, especially their seeming right to cross into Bangladesh but not to freely move within Rakhine State and the rest of Myanmar.

15. The Special Rapporteur has already noted that many are sceptical of the citizenship verification exercise. Between June 2015 and December 2016, just over 600 identity cards for national verification were issued in Rakhine State compared to almost 26,000 elsewhere. Reasons for that include the lack of consultation with affected communities resulting in their lack of understanding of the process and the continued limitations on the exercise of rights by citizens recognized through the process. Consequently, most Rohingya and other non-citizen minorities rely on the compulsory household list as the only current evidence of legal residence in Myanmar.

16. The Special Rapporteur is particularly concerned by reports of Rohingya and others being coerced into applying for identity cards for national verification. For example, one must now have the card to apply for a fishing license and travel authorizations. She reiterates her previous call to reform the Citizenship Law and related processes.

17. The Special Rapporteur remains concerned about the opaqueness of the law-making process and reiterates her previous recommendations (see A/71/361, paras. 22 and 98 (b)). A law on law-making, clearly setting out a consistent process including systematic and meaningful consultation, could be considered.

18. The Constitution remains an impediment to the achievement of full democracy. Particularly concerning are provisions that effectively lead to no civilian oversight of the military and that retain significant military influence and involvement in the parliament and the Executive. As such, the Special Rapporteur firmly believes that Myanmar is not yet a country with a truly civilian Government. While understanding that discussions on constitutional amendment remain politically sensitive, she underlines its importance to the reform process. She notes that any revision process will require time and significant effort to seek input from all stakeholders. She therefore suggests that consideration be given to establishing a preparatory committee to study possible revision processes.

2. Administration of justice

19. A strong judiciary and independent lawyers are crucial for the rule of law. Lawyers continue to face difficulties bringing cases against powerful interests, with some reporting intimidation or being subject to legal proceedings.[2] The Special Rapporteur encourages reform of the Bar Council Act (1989) to bring it into line with the Basic Principles on the Role of Lawyers.

20. There is also a need for continued strengthening of the judiciary. The Special Rapporteur encourages continued action to implement the Strategic Plan (2015-2017) of the Supreme Court and to bring the judicial appointments system into line with the Basic Principles on the Independence of the Judiciary. She notes that judicial corruption remains a problem and reiterates her call for steps to address that (see A/HRC/31/71, para. 16).

21. During her recent visit to Myanmar, the Special Rapporteur visited a hard labour camp in Mon State. She was concerned by the use of shackles as a form of additional punishment, including during quarry work, and the lack of transparency on how prisoners are selected for transfer to the camp. She noted the lack of an independent complaints system for prisoners in that camp and prisons across Myanmar. She also notes the reported

[2] Lawyer Khin Khin Kyaw is still facing charges under the Penal Code. See A/71/361, para. 24.

practice of prison labour to benefit private enterprises, which would fall into the definition of forced labour under the International Labour Organization (ILO) Forced Labour Convention, 1930 (No. 29). She hopes that the new prison law will address those issues, particularly by taking into account the Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules).

22. The administration of justice requires investigations into human rights violations and the Special Rapporteur reminds Myanmar of its obligation to consistently investigate all allegations. She notes that, while a determination of guilt is a matter for the judicial branch, the Government has a prior obligation to conduct credible "prompt, thorough, independent and impartial investigations".[3] The Special Rapporteur notes that Myanmar has established some investigative bodies that do not comply with those requirements. She also notes that in the case of unlawful killings, principle 11 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions requires that if initial investigations are inadequate, "Governments shall pursue investigations through an independent commission of inquiry or similar procedure".

B. Democratic space

23. The Special Rapporteur acknowledges the strides that Myanmar has made in opening up democratic space in recent years. However, she remains concerned about the continuing application of problematic legal provisions, particularly in politically sensitive cases, to intimidate and silence human rights defenders, lawyers, journalists and members of civil society, including through heavy surveillance, arrest and prosecution. The killing of constitutional legal expert Ko Ni on 29 January 2017 sends a particularly chilling message to those who fight for, and are vocal on behalf of, the rights of others.

24. As previously highlighted, a number of cases have yet to be conclusively resolved several years on, such as the killing of reporter Ko Par Gyi in October 2014. There is also increasing risk to those active in raising environmental and land rights issues with activist Naw Chit Pan Daing and journalist Soe Moe Tun killed in November and December 2016 respectively.

25. The Special Rapporteur expressed concerns during her meetings regarding the termination of Fiona MacGregor's contract with the *Myanmar Times* reportedly for having written about alleged violations relating to the security operations in Rakhine State. Apparently, she had been particularly targeted for actively reporting on sexual violence cases allegedly implicating security forces.

26. The Special Rapporteur has been informed of approximately 170 individuals imprisoned for peacefully exercising their rights to freedom of opinion and expression, and of association and assembly.[4] She finds the increasing use of section 66 (d) of the Telecommunications Act (2013) particularly worrying, with more than 45 cases reported, most of them in the past year.

27. The Special Rapporteur met individuals during her January 2017 visit who had been detained under that provision for expressing opinions against the military, including Hla Phone (Kyat Pha Gyi) who has been sentenced to two years' imprisonment,[5] and Myo Yan Naung Thein, whose case is still being heard. On 6 January 2017, two days before the Special Rapporteur arrived in Myanmar, the Chief Executive Officer of the Eleven Media Group, Than Htut Aung, and Chief Editor of the *Daily Eleven* newspaper, Wai Phyo, were granted bail following charges under section 66 (d) over an editorial accusing the Yangon Chief Minister of bribery, after having three previous bail applications denied. She was

[3] See the updated set of principles for the protection and promotion of human rights through action to combat impunity (E/CN.4/2005/102/Add.1), principle 19.

[4] See Assistance Association for Political Prisoners (Burma), "January Chronology 2017". Available at http://aappb.org/2017/02/aapp-b-monthly-chronology-of-jan-2017-and-current-political-prisoners-list/.

[5] Hla Phone was charged under that provision and two others.

informed of additional cases involving comments against President Htin Kyaw and State Counsellor Aung San Suu Kyi, but due to time constraints was unable to visit the relevant detention facilities.

28. The Special Rapporteur also met Htin Kyaw and Khaing Myo Tun, who were charged under section 505 (a) and (b) of the Penal Code respectively, concerning allegations made against the military. In the case of Htin Kyaw, he was also charged under the 2011 Peaceful Assembly and Peaceful Procession Law and sentenced to two months' imprisonment in February 2017.

29. The Special Rapporteur has already expressed concern that the 2011 Peaceful Assembly and Peaceful Procession Law does not allow for spontaneous gatherings. Nonetheless, it is puzzling that a lone medical student was reportedly arrested on 4 February 2017 and charged under that law for expressing his support for peace as the law defines an assembly as a gathering of "more than one person".

C. Development and economic, social and cultural rights

1. Economic, social and cultural rights and rights relating to land

30. The Special Rapporteur believes that improving the realization of economic, social and cultural rights is vital to ensuring that no one is left behind in the development process. She calls on the Government to ratify the International Covenant on Economic, Social and Cultural Rights which, together with the Sustainable Development Goals, can constitute a comprehensive framework for efforts in that area.

31. Child labour remains widespread in Myanmar with 1.1 million children affected by it. The Special Rapporteur was particularly concerned by the recent case of two girls who were forced to work and subjected to abuse in a tailoring shop in Yangon. She raised with the Myanmar National Human Rights Commission its role in that specific case and recalls that the abuses committed against those children should have been addressed as a priority rather than mediating their back pay.

32. She welcomes the Government's efforts, in collaboration with ILO, to develop a national action plan on child labour, and a list of hazardous forms of work prohibited for children. She reiterates her call for the age of compulsory education, as well as other forms of technical vocational education, to be raised incrementally to match the employment age, and for the ratification of the ILO Minimum Age Convention, 1973 (No. 138). While welcoming the extension of a forced labour complaints mechanism with ILO for 2017, and noting the reactivation of the high-level and technical working groups, it is important that initiatives are taken to localize the mechanism.

33. Birth registration is important for combating child labour and to ensure access to vital services. The Special Rapporteur welcomes the first electronic platform for birth registration and efforts to expand registration. However, she notes that registration is alarmingly low for Muslims in Rakhine State and in some conflict-affected areas of Kachin and Shan States. She encourages increased efforts to improve birth registration in those areas, especially given the additional vulnerabilities frequently faced by children there. In non-government controlled areas in Kachin, civil documentation issued by ethnic armed groups is not officially recognized, causing difficulty for children with such documents to enrol in government schools.

34. The Special Rapporteur welcomes the budget increase of the Ministries of Education and of Social Welfare, Resettlement and Relief and also welcomes the extension of free education to high school level. However, continued efforts are needed to ensure access to education for all, particularly minority groups. She is concerned that the qualifications of those who have studied in schools administered by ethnic-based organizations are not recognized, making it harder for them to access jobs and other opportunities in government-controlled areas.

35. In Rakhine State, the socioeconomic situation is reported to have remained relatively static, with Muslims not having benefited from any improvements in the past year. While

health-care facilities and infrastructure have improved to an extent, skilled and trained health professionals remain acutely insufficient,[6] and Muslims are still being prevented by the authorities from accessing many township hospitals, even during emergencies. She reiterates calls to ensure that all people, without discrimination, have safe access to township hospitals. Regarding access to education, she understands there is only one high school in Sittwe rural area, which currently serves the school-aged children of families driven out from nine townships following the 2012 violence. Temporary learning spaces, providing only basic primary education, are usually crowded and run at double shifts. Furthermore, in the northern part of Rakhine State, many Rakhine teachers are reportedly unwilling to return after being evacuated following the 9 October 2016 attacks.

36. Four years on, there appears to be no progress in finding durable solutions for the 120,000 Muslim internally displaced persons who remain in camps in central Rakhine, or for the 1,400 internally displaced persons within Maungdaw township since 2012. Decision-making about resource allocation and service expansion by international humanitarian organizations has been hampered by the lack of information on time frames and visions for the return or relocation of internally displaced persons. The Special Rapporteur calls for development, humanitarian and peacebuilding activities to be addressed in an inclusive, timely and sensitive manner with full regard for the human rights perspective to ensure a smoother transition towards long-term solutions, peace and reconciliation.

37. The right to adequate housing is also key and includes protection from forced evictions. Reportedly in September 2016, Rakhine State government moved to identify buildings allegedly constructed without permission and have them dismantled. Over 2,200 such buildings in Maungdaw were apparently identified, including mosques and madrasas, over 400 shop stalls and over 1,600 residential homes. In Buthidaung, over 1,000 "illegal" buildings were identified, including mosques, madrasas, shops stalls and over 800 homes. Demolition of those buildings reportedly began in November 2016. Of almost 1,000 structures allegedly dismantled from almost 2,000 identified buildings in Maungdaw south, 80 per cent were houses. Some 89 houses of 285 identified in Rathedaung Township have also been dismantled. In some cases, individuals were reportedly made to dismantle their own homes or were extorted by security personnel to avoid demolition.

38. In all those cases, the owners and residents affected did not appear to have been provided with alternative housing that satisfied the criteria for adequacy,[7] nor the right to adequate and effective legal or other appropriate remedies, which are required to be made available to those claiming that their right to protection against forced eviction has been violated or is under threat of violation. The Special Rapporteur is therefore concerned that the dismantling of those structures is part of the Government's apparent wider systematic and institutionalized discriminatory policy against the Rohingya and Muslim populations in Rakhine State.

39. With an estimated 70 per cent of the population of Myanmar in rural areas, land is central to people's livelihoods; addressing historic and continuing land confiscation remains a challenge. The Special Rapporteur welcomes the continuing return of land by the Central Review Committee on Confiscated Farmlands and Other Lands. However, over 8,000 cases remain pending. She is concerned by prosecutions of those fighting land confiscations. For example, in Shan State, 72 people were sentenced to a month's imprisonment for trespass after working land they used to own but which was allegedly confiscated by the military.

40. The National Land Use Policy, adopted in 2016 after extensive consultation, contains important guarantees, including on recognizing customary land use, and community consultations. The Special Rapporteur is therefore concerned by its possible revision, potentially removing such key provisions. She calls for those protections to be

[6] See Center for Diversity and National Harmony, *Rakhine State Needs Assessment II* (Yangon, 2016).

[7] The criteria include accessibility, affordability, habitability, security of tenure, cultural adequacy, suitability of location and access to essential services such as health and education. See www.ohchr.org/Documents/Issues/Housing/Guidelines_en.pdf.

retained and for the drafting of an overarching land law in line with the policy and with human rights standards.

2. Sustainable development, and business and human rights

41. As Myanmar continues to reform, it is important that the ensuing benefits are not concentrated among small sections of the population. That is likely to require policy development addressing difficult questions on resource-sharing, decision-making processes for approving development projects and strategies to combat increasing inequality. The Special Rapporteur recalls the importance of a people-centred form of sustainable development, which protects the rights of local populations.

42. The Special Rapporteur has been following developments regarding the Letpadaung copper mine project. She is concerned that there is still no accountability for the killing of Khin Win in 2014. She notes concerning information of a potentially hazardous waste overflow in November 2015, continued prosecutions of protestors, including two who were charged in June 2016, and that an additional 141 households are facing eviction after a mine expansion plan was announced without due consultation.[8] She calls for the plan to be halted until genuine consultations are held with communities, for environmental safeguards to be strengthened and for further investigations into the death of Khin Win.

43. The Special Rapporteur has already welcomed the adoption of environmental impact assessment procedures (see A/HRC/31/71, para. 67), but notes reports they are not being consistently implemented and that there is limited understanding of consultation requirements. She was informed by the Ministry of Natural Resources and Environmental Conservation that it is in the process of drafting public consultation guidelines, which she hopes will ensure consistent and meaningful consultations.

44. Mining projects continue to have a severe impact on the lives of communities. The Special Rapporteur had hoped to travel to Hpakant to visit communities affected by mining, but her request was denied. She was fortunate to meet affected individuals who had travelled from there to meet her in Myitkyina. They painted a grim picture, detailing extensive environmental destruction, children suffering from breathing difficulties due to mining dust, and allegedly over 100 people killed by traffic accidents involving mining vehicles.

45. The Special Rapporteur welcomes the fact that the Ministry of Natural Resources and Environmental Conservation recognizes key challenges in the sector and its clear desire to tackle them. The decision to suspend the issuance and renewal of licences for jade extraction until the legal framework is reformed is particularly welcomed. She notes that, in order to fully capitalize on that opportunity, it will be important to ensure revision of the legal and policy framework following a consultative process, and inclusion of strong protections against environmental and human rights abuses and against corruption. She encourages increased transparency across the mining industry with systematic publication of up-to-date information on permit holders and licencing terms. She encourages the Government to take appropriate steps to investigate, punish and redress any human rights abuse relating to business activities in all sectors and ensure victims' access to an effective remedy in accordance with international standards.

46. The Special Rapporteur notes that the second report of Myanmar under the Extractive Industries Transparency Initiative is scheduled for submission in March, but understands that an extension of that deadline is being sought. She welcomes the formation of a leading committee, and the steering committee's first meeting in December. She encourages the Government to quickly form the national level multi-stakeholder group and underlines the need for work on the second report to begin forthwith, in collaboration with civil society. She also calls for the jade sector to be fully included in that report.

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[8] See Amnesty International, *Mountain of Trouble: Human Rights Abuses continue Myanmar's Letpadaung Mine* (Index: ASA 16/5564/2017), available at www.amnesty.org/en/documents/asa16/5564/2017/en/.

47. Currently the Myanmar garment industry employs around 350,000 workers, most of whom are women. The Special Rapporteur is disturbed to learn that some factories are breaching labour standards, including by forcing workers to work overtime and withholding salaries for periods of illness.[9] The Special Rapporteur recalls that companies have a responsibility not to cause, contribute or be directly linked to human rights abuses. She calls on all investors and business in Myanmar to proactively ensure that they abide by the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework and other relevant standards, ensure respect for human rights through relevant policies and processes, and address any adverse rights impacts with which they are involved. She encourages application of the principles for responsible contracts to ensure that human rights are addressed in negotiations on investment projects between Myanmar and foreign business investors. Ensuring genuine public consultation on bilateral investment treaties being developed and that such treaties protect the ability of Myanmar to regulate to protect human rights is also important.

D. Conflict and the peace process

48. The Special Rapporteur is extremely concerned by continued and escalating violence in Kachin, Shan and other states and the increasing impact on civilian populations. The situation has significantly deteriorated in recent months and she is informed that it is currently worse than at any point in the past few years, with fighting increasingly approaching urban centres and populated areas.

1. Displacement and access

49. In northern Shan State, approximately 15,000 persons, almost the entire population of the Mongkoe area, were temporarily displaced. Many have now returned, but the Special Rapporteur was informed that movement in and out of the town remains restricted. In January 2017, an additional 4,000 individuals reportedly remained displaced in northern Shan following the escalation of fighting in November 2016. There were also clashes between the Arakan Army and the Tatmadaw (Army of Myanmar) in Chin State in December 2016, displacing 200 people; and 2,000 people remain displaced following clashes in central Rakhine in April 2016. Around 5,500 persons also remain displaced in Kayin State following violence in September 2016.

50. In Kachin State, an estimated 7,000 individuals have been newly displaced, including nearly the entire population of three camps for internally displaced persons located in non-government controlled areas after shells landed near the camps. Those individuals, who have already been displaced once, were forced to flee for a second and in some cases a third time, often leaving everything behind in the rush to seek safety. Some of them unsuccessfully attempted to cross the Chinese border. Many are still stranded in the border area without proper shelter. Others have arrived in government-controlled areas. The Special Rapporteur met with some of those individuals and one family, with four young children, told her that they were forced to dig a hole in the forest and stay there overnight for six days while trying to find the finances needed to leave the area.

51. The dire situation of civilians in Shan and Kachin States is compounded by the increasing limits on humanitarian access. For over eight months, the United Nations and other international organizations have been systematically denied authorization to travel from government-controlled areas to non-government controlled areas to deliver vital and in some cases lifesaving assistance to over 40,000 internally displaced persons. Access to government-controlled areas is also becoming more restricted, with additional layers of approval needed, including from the Military Northern Command. Where permission is granted it is frequently limited to national staff. Local organizations, often with limited capacity, continue to provide much-needed assistance but also face increasing restrictions.

[9] See Martje Theuws and Pauline Overeem, *The Myanmar Dilemma: Can the garment industry deliver decent jobs for workers in Myanmar?* (Amsterdam, Centre for Research on Multinational Corporations, Action Labor Rights and Labour Rights Defenders and Promoters, 2017).

The Special Rapporteur's request to visit Laiza and meet those affected was denied for security reasons. She then requested to visit Mongkoe and other locations in Shan State as an alternative, but that was also denied.

52. The Special Rapporteur emphasizes that the United Nations and its partners should have regular, independent and predictable access to all those in need of humanitarian assistance wherever they are located. She reminds the Government of its commitment to "leave no one behind",[10] and calls on it and all other parties to grant immediate, unfettered access to all sites hosting internally displaced persons. She also calls on the Government to officially withdraw the unacceptable proposal that internally displaced persons should travel extensive distances and cross conflict lines to receive assistance.

53. The Special Rapporteur welcomes the first pilot of voluntary returns of refugees from Thailand in October 2016 involving 71 individuals. She underlines that all returns must be in compliance with international standards. She also notes that clear policies will be needed to address issues likely to hamper returns including security and safety, landmine clearance, adequate housing, where applicable restitution of land for returnees, reacquisition of vital legal documents and equal access to public services and livelihoods.

2. Conflict-related violations

54. The Special Rapporteur is concerned by the continuing reports of conflict-related violations committed by all parties, including torture, inhuman and degrading treatment, sexual and gender-based violence, arbitrary killings, abductions, including for forced labour and use as human shields, looting and property confiscation.

55. There has also been a worrying trend of reportedly indiscriminate attacks in or near civilian areas, including displacement sites, schools and in some cases, areas where there are no known legitimate military targets. In one incident on 12 January 2017, two civilians, including a 6-year-old boy, were reportedly killed when artillery shells landed in a village in northern Shan State.

56. Sexual and gender-based violence, including intimate partner violence, remains a problem across the country but is particularly prevalent in conflict areas and areas of increased militarization. Survivors have limited access to life-saving services due to the limited capacity of providers and specialists, and restrictions upon women's freedom of movement due to increased militarization. There have been numerous allegations of rapes carried out by members of the security forces in Rakhine State following the 9 October 2016 attacks. Few survivors are able to reach the necessary medical care. Underreporting is widespread; only 50 per cent of women in Rakhine State and 18 per cent of women in Kachin State accepted referral to health-care providers in 2016. Those figures are drawn from programming data that represent a fraction of the incidents; the vast majority remain unreported. Survivors are allegedly asked not to report sexual and gender-based violence to humanitarian organizations and sometimes face repercussions if they do so. Where cases are reported, there is still widespread impunity. Two years after the rape and murder in 2015 of two Kachin schoolteachers, Maran Lu Ra and Tangbau Hkwan Nan Tsin, the perpetrators remain at large. The previously highlighted cases of Sumlut Roi Ja and Ja Seng Ing have not yet been solved.

57. While noting information from the Government that nine members of the military who were accused of rape were tried in civilian courts in 2015 and 2016, many cases involving Tatmadaw personnel are still tried under court martial rather than being transferred to civilian courts. Seven soldiers were court-martialled for the killing of five civilians in June 2016 and sentenced to five years' imprisonment. The deaths of two other civilians killed on the same day in the same location remain unexplained.

[10] See Htin Lynn, Director-General, International Organizations and Economic Department, Ministry of Foreign Affairs, Myanmar, statement delivered at the World Humanitarian Summit, Istanbul, Turkey, 24 May 2016. Available from https://consultations.worldhumanitariansummit.org/bitcache/f6e4658e546e2b02b37aaa9f839c9f7641c69aca?vid=581020&disposition=inline&op=view.

58. In Rakhine State, the Special Rapporteur met individuals detained under section 17 (1) of the Unlawful Associations Act (1908), which is not in accordance with international standards. She reiterates her concern that some individuals detained under that Act have allegedly been tortured during interrogations. She is also concerned by the case of two Kachin pastors, Langjaw Gam Seng and Dumdaw Nawng Lat, who spoke to journalists following the bombing of their church in Mongkoe. The Government had initially denied involvement in their disappearance but the Tatmadaw later admitted to detaining them. She understands that they have been transferred to a police station and charged under the Act. She questions whether that may be a case of reprisal for speaking out, and calls for a thorough and impartial investigation, as well as respect for due process.

59. Eight parties to the conflict in Myanmar remain listed in the report of the Secretary-General on children and armed conflict (see A/70/836-S/2016/360, annex I). The Special Rapporteur welcomes the release of over 800 children from the armed forces since 2012, as well as the improvement of age verification procedures. She reiterates her calls for the Government to ratify the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, and for ethnic armed groups to develop action plans, including against underage recruitment.

60. The Special Rapporteur condemns in the strongest terms the apparent total disregard for civilian lives and underlines the need for all parties to take immediate steps to protect civilians, respect international human rights and humanitarian law and end the violence. She particularly recalls common article 3 of the Geneva Conventions, which provides for the protection of civilians from inhumane treatment and violence to life and person in non-international armed conflicts. Urgent steps should be taken to ensure independent and impartial investigations into all violations. Training and awareness-raising in the military and armed groups should also be provided and expanded.

3. Peace process

61. Against that concerning context, the peace process is continuing. The Special Rapporteur welcomes efforts by the Government to engage in dialogue with all groups. The Twenty-first Century Panglong Conference took place from 31 August to 3 September 2016 and was attended by representatives of the Government, the parliament, the Tatmadaw and 18 armed groups, while 3 other armed groups were excluded. During her recent visit, she was informed that national-level dialogues had been held in three regions (Kayin State, Tanintharyi Region and Nay Pyi Taw) as part of the consultative process. The next Union-level peace conference will be held soon; it is currently unclear whether all groups can participate. She welcomes assurances that human rights will be mainstreamed across discussions and underlines the need for the inclusion of commitments to, and mechanisms for, accountability and non-discrimination, as well as issues relating to land and natural resource sharing and entrenched inequalities. The Special Rapporteur notes that a parallel civil society organization forum is due to be held and reiterates the vital role of civil society in the peace process.

62. The Special Rapporteur welcomes the increased female representation in the Twenty-first Century Panglong Conference, at which women represented 13 per cent of all participants, while noting that that still falls short of the previously agreed minimum of 30 per cent. She has received assurances that efforts will be made to increase representation further at the next conference and hopes that the minimum level will be reached. She highlights the fact that, in line with Security Council resolutions 1325 (2000) and 1889 (2009), women should be represented at all levels, including in decision-making and leadership positions and implementation mechanisms. She notes with concern that gender equality and women's rights have not been recognized as a priority area, failing to qualify as one of the 20 sub-themes drawn up during the peace process. She recommends that consideration be given to establishing a gender advisory group at the national level.

63. Myanmar remains one of the most mined countries in the world, with 159 casualties reported in 2015,[11] and numerous others in 2016. The Special Rapporteur is particularly concerned by the risk that landmines and other explosive remnants of war pose to the increasing numbers of civilians being displaced, as well as to future resettlement efforts. She again calls on all parties to immediately cease using landmines and for the Government to ratify the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction. She calls for removal, mapping, clearance and fencing activities to be prioritized and expanded.

E. Attacks against Myanmar Border Guard Police facilities on 9 October 2016 and the aftermath

64. On 9 October 2016, three Myanmar Border Guard Police facilities in Rakhine State (in Kyee Kan Pyin and Nga Khu Ya in Maungdaw township and Koe Tan Kauk in Rathedaung township) were reportedly attacked by groups of armed men in a coordinated manner. In addition to the nine members of the Myanmar Police Force who were reportedly killed, the armed attackers appeared to have seized arms, weaponry and ammunitions. The security forces (the Tatmadaw, the Myanmar Police Force and the Border Guard Police) immediately responded with a counter-operation to pursue the attackers and recover the stolen items. The Ministry of Defence issued a statement on 14 October announcing that the initial operation would last three months and that that period was extendable.

65. During the subsequent counter-operations, further clashes reportedly occurred, the most serious of which took place on 12 and 13 November. The Government reports that there were more than 20 attacks and ambushes during the "clearance operations" with seven soldiers, including one column commander, and one police officer killed and many others injured. The Government of Bangladesh reportedly arrested and returned to the Government of Myanmar two suspected attackers who had crossed the border. Early information regarding the attackers' origins, motives and other details were apparently obtained from the interrogation of those two as well as two other suspects arrested by the authorities of Myanmar.

1. Lack of access to information and the affected population

66. In the immediate aftermath, the Government extended an existing curfew from 7 p.m. to 6 a.m. in Maungdaw and two other townships. In respect of the "clearance operations", Maungdaw, Buthidaung and Rathedaung townships were officially declared affected and closed off for security reasons. All humanitarian operations and activities normally undertaken in those areas were suspended. Teachers, health workers and other service providers left those areas, with reports that military helicopters were used in some cases to evacuate Rakhine civil servants from remote areas.

67. As at 21 October 2016, it was estimated that about 3,000 Rakhine community members had been displaced. Some were reportedly transported by boat out of Maungdaw and many were provided with temporary shelter in Buthidaung, Maungdaw and Sittwe towns. Their needs were attended to by the State Government, local non-governmental organizations and religious organizations, with offers of international assistance from the United Nations and other international organizations mostly declined. In contrast, the estimated 10,000 to 15,000 Rohingya community members displaced as of 21 October had apparently not received any government assistance and had been given shelter by host communities in villages affected by security operations. Humanitarian organizations, despite being ready to undertake assessment and respond to the population in need, were not permitted to do so. Due to the lack of humanitarian access, it was extremely difficult for the actual number of those displaced and their needs to be to accurately ascertained.

[11] See International Campaign to Ban Landmines and Cluster Munition Coalition, *Cluster Munition Monitor 2016* (August 2016). Available from www.the-monitor.org/media/2394895/Cluster-Munition-Monitor-2016-Web.pdf.

68. As of 4 November, due to pre-existing humanitarian services having been suspended in most parts of northern Rakhine, more than 150,000 people were without their normal cash and food and nutrition assistance; 3,400 children already diagnosed with severe acute malnutrition did not have access to their usual life-saving treatment; over 2,900 children who have been cured of severe acute malnutrition could not obtain their follow-up treatment and faced a high risk of relapsing; and the cases of 42,000 people, including 37,000 children with moderate acute malnutrition, were at high risk of deteriorating into severe acute malnutrition cases.[12] An estimated 7,600 pregnant women were also unable to access continuing medical care.[13] Reportedly, Hindu community members in Maungdaw also suffered from food shortages, lack of medical services and other challenges as a result of movement restrictions and security operations. As of 13 February 2017, some 69,000 people were estimated by the United Nations and humanitarian organizations in Bangladesh to have crossed into Bangladesh following the 9 October attacks. The World Food Programme (WFP) estimated that an additional 24,000 Rohingya people were internally displaced in Maungdaw north. By the end of January 2017, the majority of the ethnic Rakhine and Mro who had been displaced from their homes had returned, although around 272 Rakhine and Mro people remained displaced in Maungdaw and Buthidaung.

69. Humanitarian access was eventually incrementally allowed, at times in an almost ad hoc way. For example, following the Government-led diplomatic mission comprising the United Nations Resident and Humanitarian Coordinator and the ambassadors or heads of missions from nine embassies to visit selected northern Rakhine villages on 2 and 3 November 2016, a commitment was made for the resumption of humanitarian activities. However, WFP was able to deliver two-weeks' worth of food rations to only four villages between 8 and 10 November subsequent to that commitment. Furthermore, those were one-off deliveries permitted to be conducted by national staff only.

70. Just prior to the Special Rapporteur's visit, it was announced that WFP had been given access to 43 village tracts (containing 151 villages) in Maungdaw north with regular operations resuming in that area, although the restriction against international staff stood at the time of writing of the present report. As of 2 February 2017, while health clinics and nutrition centres had reopened in some areas, it appeared that fewer people had been accessing them, as the situation remained tense and movement confined through a strict travel authorization regime.

71. In the immediate aftermath of the 9 October attacks and subsequent security operations, information was difficult to obtain regarding the situation in northern Rakhine. Independent media were not allowed in, and while an "Information Committee" was formed under the State Counsellor's Office, much of the information being released appeared similar to that released by the Ministry of Defence. Following further international pressure, a government-managed visit by a group of journalists was allowed to northern Rakhine from 20 to 22 December 2016, accessing almost the same areas as the earlier diplomatic mission. No explanation was given on how participants were selected and there appeared to be little reporting following the visit. One tragic outcome was the reported beheading of a villager in an apparent act of retaliation for having spoken to the journalists. The circumstances surrounding that killing remain unclear although the Government has reported that the group responsible for the 9 October attacks was behind that, as well as 13 other reported killings. To date, that remains unconfirmed and independent media and human rights monitors still have no access to the north of Rakhine.

2. Allegations of human rights violations

72. Following the 9 October attacks and the launch of the security operations, reports began surfacing, increasingly and persistently, regarding serious human rights violations

[12] See Office for the Coordination of Humanitarian Affairs (OCHA), "Update on the situation in Rakhine State – 4 November 2016", e-mail to OHCHR, 4 Nov. 2016.

[13] See OCHA, "OCHA Update — Humanitarian situation in the northern part of Rakhine State, Myanmar — 13 December 2016". Available at http://reliefweb.int/report/myanmar/ocha-update-humanitarian-situation-northern-part-rakhine-state-myanmar-13-december.

against the Rohingya. On 24 October, the Special Rapporteur and several United Nations experts publicly expressed their concerns regarding allegations of summary executions, including of children, and arbitrary arrests, as well as burning down of houses and mosques as part of the security operations. The experts called for thorough and impartial investigations of all suspected cases of extra-legal, arbitrary and summary executions and for access for humanitarian organizations to undertake a needs assessment, continue delivering assistance and ensure that the protection, needs and well-being of affected populations were urgently and properly addressed.[14]

73. Despite the lack of access to the affected areas, reports continue to be released, including by international non-governmental organizations and media, based on satellite imagery and analysis, as well as from interviews with individuals who have fled Rakhine State.[15] The Government's consistent response to these allegations was denial and dismissal. While the Government declined the request from the United Nations High Commissioner for Human Rights for a team to access northern Rakhine,[16] the Government of Bangladesh allowed access to a four-member team from the Office of the United Nations High Commissioner for Human Rights (OHCHR) to meet in Cox's Bazar with members of the Rohingya population who had fled from northern Rakhine in the wake of the events of 9 October. The flash report issued on 3 February documented a horrifying number of serious human rights violations that appeared to have taken place in a widespread and systematic manner "indicating the very likely commission of crimes against humanity".[17] The alleged violations recorded from testimonies of over 200 Rohingyas include extra-judicial killings, enforced disappearances, torture and inhuman treatment, rape and other forms of sexual and gender-based violence, arbitrary arrest and detention, deportation and forced transfer as a result of violence and persecution. The testimonies indicate that the attacks against Rohingya villages, including the deliberate destruction of houses and food stocks, made it impossible for Rohingya people to continue living in their villages, "thereby creating a coercive environment amounting to forced displacement". In that regard, the High Commissioner urged Myanmar to bring the military operations to an end and conduct an independent investigation.

74. While the Special Rapporteur did have access to five Rohingya villages in Maungdaw from where many reports of alleged violations had emanated and spoke to villagers, the visits were conducted in a brief period of time conducted over one day, making it difficult to ascertain the full scale and reliability of allegations conveyed. Furthermore, while government officials and security personnel did not closely monitor the Special Rapporteur while she was talking to community members, she still noted the extreme state of fear and anxiety on the part of those who spoke with her and recognizes the possibility that informants from within the community might later report to others on those conversations. The Special Rapporteur also visited Rakhine communities, including one displaced Mro community, and one Hindu community during her visit to Rakhine State. She notes that all communities reported increased livelihood difficulties following the 9 October attacks, as well as anxiety and fear.

75. One of the more remarkable observations made during the visit to Maungdaw was of "hanging doors". It had been reported previously that during the security operations, villagers were ordered to remove fencing around their houses, yards, ablution blocks and water ponds (allegedly accompanied by harassment, arrest and extortion of villagers). The observation of doors standing alone without fencing appears to corroborate those orders, which have made women feel particularly vulnerable and insecure as bathing and toilet facilities are normally enclosed within those fences. The Special Rapporteur noted that earlier in June, an instruction was apparently issued by the Maungdaw authorities to ban zinc fencing around "Bengali" houses and its implementation was reportedly accelerated following the 9 October attacks. While the justification given for these instructions was

[14] See www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20742&LangID=E#sthash.

[15] See Human Rights Watch, "Burma: military burned villages in Rakhine State", 13 December 2016. Available from www.hrw.org/news/2016/12/13/burma-military-burned-villages-rakhine-state.

[16] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21042&LangID=E.

[17] See www.ohchr.org/Documents/Countries/MM/FlashReport3Feb2017.pdf. See also A/HRC/32/18.

security considerations, they appear to be further forms of intimidation, harassment and ultimately discrimination against the Rohingya population to make their living conditions unbearable.

76. The Special Rapporteur was further alarmed to hear that an annual household list update that is normally conducted in January had been brought forward in some areas. Reportedly, the exercise was under way from early November 2016 in the three northern Rakhine townships. For many Rohingya and Muslim villagers, being on the compulsory household list is the only current evidence of their legal status in Myanmar. With thousands displaced and many more having fled from their homes following the security operations, they risk being unable to prove that they are legal residents of Myanmar upon their return if their names are removed during the updating exercise.

J. Accountability mechanisms

77. Despite early calls for thorough and impartial investigations into the allegations of human rights violations in the wake of the 9 October attacks, it was announced only on 16 November that a Presidential investigation commission into events in Maungdaw would be established. An informal briefing of the United Nations Security Council on the situation in Rakhine appeared to have taken place around the same date.[19] The Government-appointed Rakhine Advisory Commission, established in August 2016, had already clarified that its mandate did not include human rights investigations.

78. The Special Rapporteur noted that the Presidential Maungdaw Investigation Commission is headed by Vice-President I, who is a former military commander, and its members include other former military members, as well as the Chief of the Myanmar Police Force. There appears to be no one from the Rohingya community represented although there is one Muslim member, an elderly former Ambassador of Myanmar. Other members include a representative from the Attorney-General's Office, former high-ranking United Nations officials, a member of the Myanmar National Human Rights Commission (formerly of the foreign service), female members with women's rights backgrounds, as well as those of other faiths and ethnic minorities. In addition to the inclusion of some members that calls into question the Commission's impartiality, its mandate does not appear to necessarily encompass investigations into allegations of human rights violations. Its interim report appears to contain blanket statements that do not seem to have been based on assessing available information and evidence, raising serious doubts about its credibility.

79. The Special Rapporteur has already expressed concerns regarding the Commission's methods of work. She notes that the shortcomings mean that Myanmar has yet to properly discharge its obligation to conduct credible "prompt, thorough, independent and impartial investigations" into alleged human rights violations (see para. 22 above). She also notes that two mechanisms, a military investigation commission and a police investigation, were set up in early February. They seem to be purely internal mechanisms and do not diminish the need for independent mechanisms.

80. During her recent visit, the Special Rapporteur raised with the authorities reports of custodial deaths among those arrested during security operations, including a former United Nations employee. She was told that these deaths had resulted from pre-existing health conditions. While the Special Rapporteur did not obtain access to the post-mortem reports of these cases, concerns to raised regarding treatment in detention, including during interrogations, and access to immediate and proper medical treatment. In many cases, it would appear that suspects did not have legal representation. Additionally, many detainees' families were not informed of their arrests, with many believing their family members had been killed. She calls for the families of detained individuals to be immediately informed of their whereabouts and due process guarantees respected.

81. Undoubtedly, the situation in Rakhine is complex. The Special Rapporteur reiterates that the long-standing grievances from the Rakhine Buddhist community must be urgently addressed, noting that Rakhine State is now the poorest state in Myanmar. Access to

[19] See www.nytimes.com/2016/11/19/world/asia/myanmar-rakhine-rohingya-muslim.html?_r=0.

education, health care and livelihoods must be prioritized and guaranteed to all communities, including the Rohingya community. The recent developments add to the already complex nature of the situation. The entrenched fear, hostility and lack of empathy toward the Rohingya people are pervasive throughout the whole of Myanmar. As such, the Special Rapporteur is heartened to see that more than 40 local civil society organizations have recently signed a statement calling for an independent investigation into the aftermath of the 9 October attacks. She encourages all Myanmar human rights defenders to speak up and act for the human rights of all, including the Rohingya people.

III. Conclusions

82. **It has been almost one year since the new Government came to power. The Special Rapporteur has already noted in her previous report the formidable human rights challenges it faces while simultaneously having to navigate and direct a bureaucracy carried over from the previous Government, as well as govern within the constraints of a Constitutional framework which gives precedence to military prominence over civilian authority. She recalls that the consolidation of democracy and the creation of a culture of respect for human rights is a complex undertaking that requires political will and sustained investment in not just enhancing the functioning and integrity of State institutions but also their accountability.**

83. **While improvements have been seen in some areas and some are making clear efforts, as the Special Rapporteur reflected after her recent visit, many ordinary people in Myanmar have unfortunately begun to lose hope that the new Government will address their needs and concerns. That is undoubtedly at least partially due to the continued impunity enjoyed by the military and other security forces and their dominant position in the Government. Trust that was placed in the new civilian leadership has started to wane with repeated incidents that carry the hallmarks of the previous Government. Where abuses and violations are suspected, the Government appears quick to resort to its standard position of "defend, deny and dismiss".**

84. **Addressing the apparent climate of impunity will be vital for the new Government moving forward. Impunity arises from a failure by States to meet related obligations, including to investigate violations; take appropriate measures in respect of the perpetrators by ensuring that those suspected of criminal responsibility are prosecuted, tried and duly punished; provide victims with effective remedies; and take other necessary steps to prevent the recurrence of violations.[19] Pervasive impunity also emboldens acts of retaliation and reprisals by those implicated in alleged abuses and violations.**

85. **Currently, existing policies, laws and avenues for redress appear to favour those in positions of power rather than ensure that everyone is equal before the law and has an equal opportunity to have legitimate grievances addressed. Laws continue to be misused to stifle freedom of association and assembly, and to subvert freedom of opinion and expression. Individuals who have lived on land for generations continue to face eviction without proper safeguards for projects that bring them little or no benefits. Conflict, which continues to have a devastating effect on civilians, sometimes appears to be focused around resource-rich areas or near lucrative projects.**

86. **The Special Rapporteur reminds the Government of the distinction between rule of law and rule by law, as far too often issues of concern are explained away as having been dealt with "according to the law". Too often also cases of abuses and serious, even grave, human rights violations that potentially involve the State as the perpetrators, are closed with no explanation or dealt with in secrecy under the pretext of national security. Alternatively, a plethora of committees or commissions are set up to tackle the same issue with duplicative mandates, insufficient guarantees of**

[19] See the updated set of principles for the protection and promotion of human rights through action to combat impunity (E/CN.4/2005/102/Add.1), principle 1.

independence and impartiality, and confusing, inconclusive and delayed outcomes. Where the State is unable to discharge its primary duty of investigating violations, taking appropriate measures against perpetrators and providing victims with effective remedies, it must seek assistance to do so. When it is unwilling to do so, the international community must step in and step up.

IV. Recommendations

87. **The United Nations should, under the leadership of the new Secretary-General, arrive at a more comprehensive and coordinated approach to United Nations action in Myanmar, including peacebuilding, development and humanitarian assistance, with human rights principles at their core.**

88. **The international community should:**

(a) **Establish a commission of inquiry to investigate the systematic, structural and institutional discrimination in policy, law and practice and the long-standing persecution against the Rohingya and other minorities in Rakhine State with a focus on the incidents of violence in 2012 and 2014, and the security operations following the attacks on 9 October 2016, which may amount to crimes against humanity;**

(b) **Hold a dedicated and urgent discussion on Myanmar in the appropriate format at the Human Rights Council to address the human rights violations occurring in other parts of the country, including the escalating conflict in Kachin, northern Shan, as well as increasing militarization in areas such as Kayin State;**

(c) **Call on the Government of Myanmar to implement its commitment to open an OHCHR country office with a full mandate;**

(d) **Remain seized of the human rights situation in Myanmar in all relevant intergovernmental forums;**

(e) **Put human rights at the forefront of all bilateral cooperation with, and investments in, Myanmar and proactively adhere to the Guiding Principles on Business and Human Rights;**

(f) **Ensure that all investors and businesses, domestic and international, abide by the Guiding Principles on Business and Human Rights and other relevant standards in their investments and operations in Myanmar;**

(g) **Ensure that the home States of companies operating in Myanmar fulfil their duties to protect human rights as called for by the Human Rights Council in its resolution 31/24.**

89. **The Special Rapporteur reiterates all of her previous recommendations addressed to the Government of Myanmar that have not yet been implemented. In particular, she reiterates the recommendations listed below.**

90. **Regarding the rule of law and democratic space, the Government should:**

(a) **Amend or repeal legislation and legal provisions that limit fundamental freedoms and contravene international standards, including those previously identified by the Special Rapporteur and the previous mandate holders (see A/HRC/31/71, annex), to bring them into line with international human rights standards;**

(b) **Remove criminal sanctions from the Peaceful Assembly and Peaceful Procession Law and amend or repeal section 505 (b) of the Penal Code;**

(c) **Review and amend the Citizenship Law (1982) to bring it into line with international standards. In particular, remove provisions that provide for the granting of citizenship on the basis of ethnicity or race;**

(d) **Resolve the legal status of habitual residents of Myanmar, including former holders of the temporary registration card, and ensure that they have equal access to citizenship through a non-discriminatory and voluntary process;**

(e) **Enact laws on the prevention of violence against women and on the rights of children that are compliant with the international obligations of Myanmar;**

(f) **Initiate a process of consultation with all stakeholders, possibly through the establishment of a preparatory committee focusing on the review and amendment of the Constitution, to bring it into line with international standards;**

(g) **Cease immediately the arbitrary arrest and prosecution of those exercising their fundamental rights, including their rights to freedom of assembly, association and expression, and release all those arrested for exercising those rights;**

(h) **Conduct prompt, thorough, independent and impartial investigations and systematically ensure redress for any violence, threats, acts of intimidation or harassment against members of the media and of civil society;**

(i) **Publicly condemn all acts of incitement to discrimination, hostility and violence against minorities, while upholding freedom of expression.**

91. **Regarding conflict and the peace process, the Government should:**

(a) **Immediately ensure prompt, thorough, independent and impartial investigations into allegations of violations committed in conflict areas, and the prosecution and punishment of all perpetrators;**

(b) **Immediately ensure that the United Nations and its partners have regular, independent and predictable access to all those in need of humanitarian assistance, wherever they are located;**

(c) **Ensure greater participation of women in the peace process, particularly in leadership roles including in the forthcoming Union Peace Conference, with a minimum quota of 30 per cent and integration of a gender perspective into political dialogues;**

(d) **Take specific steps to develop a comprehensive support programme for victims and survivors of sexual and gender-based violence, including access to justice, health and psychosocial care, and socioeconomic support, and take the necessary steps to ensure that perpetrators are prosecuted and convicted;**

(e) **Cease immediately the use of landmines, ratify the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction, and scale up the clearance of mines and unexploded ordnance, marking and fencing activities. Institute systematic mine risk and education activities;**

(f) **Ratify the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict;**

(g) **Ensure the involvement and integration of civil society organizations in the peace process.**

92. **Regarding development and economic, social and cultural rights, the Government should:**

(a) **Ensure access to adequate health, education and other basic services for all, particularly in Rakhine State, without discrimination;**

(b) **Ensure consistent participatory, inclusive and meaningful consultations with the communities on all development projects and the proper consideration of all comments received;**

(c) **Ensure careful drafting of any changes to existing or new legislation, rules, regulations and agreements governing extractive industries and major development projects to ensure that they include transparency requirements and environmental, social and human rights protection;**

(d) **Ensure the full implementation of the Guiding Principles on Business and Human Rights and protect against any human rights abuse within the territory of Myanmar by third parties, including business enterprises, through adequate policies and laws;**

(e) **Ratify the International Covenant on Economic, Social and Cultural Rights.**

93. **The authorities of Rakhine State should:**

(a) **Conduct prompt, thorough, independent and impartial investigations into all alleged violations of international human rights law, and hold perpetrators to account;**

(b) **Lift the curfew order and restrictions on freedom of movement in Rakhine State;**

(c) **Review and revise all local orders, instructions and other policies and practices that are discriminatory in law and in practice;**

(d) **Take concrete steps to address long-standing challenges to social and economic development through a human rights-based approach, while ensuring the participation of affected communities and fostering reconciliation and greater integration between communities;**

(e) **Immediately provide durable solutions for the persons who have been internally displaced since 2012.**

94. **In addition, the Special Rapporteur makes the following new recommendations to the Government of Myanmar:**

(a) **Cooperate to agree on joint benchmarks that are specific and time-bound;**

(b) **Conduct a conclusive independent and impartial investigation into the assassination of Ko Ni, with international assistance.**

95. **Regarding the rule of law and democratic space, the Government should:**

(a) **Establish an appropriate, systematic consultation process for the drafting and review of amendments to existing legislation or new draft laws to ensure transparency, vetting for compliance with international standards and adequate engagement with civil society organizations and members of the public, possibly through a law on law-making;**

(b) **Ensure that draft laws, including the hate speech law and the citizens private security and protection law, are in line with international standards;**

(c) **Create a legal framework for surveillance in line with international human rights standards and in consultation with experts;**

(d) **Continue the moratorium on the death penalty with a view to its abolition.**

96. **Regarding development and economic, social and cultural rights, the Government should ensure that the protections provided in the National Land Use Policy are retained and draft, following consultations, an overarching land law that is in accordance with international human rights standards.**

97. **The authorities of Rakhine State should:**

(a) **Uphold the rights of accused persons by ensuring all due process guarantees are respected and fulfilled, and by keeping their families informed of their arrest or detention and location;**

(b) **Refrain from issuing and implementing new orders and instructions that are discriminatory in law and in practice or that have a disproportionate impact on Muslim and Rohingya communities resulting in the deterioration of their living conditions and legal status;**

(c) **Grant regular, independent and predictable access for humanitarian actors to northern Rakhine to undertake needs assessments and continue delivering assistance, as well as ensure that the protection, needs and well-being of affected populations are urgently and properly addressed.**

98. **The Special Rapporteur recommends that the Government consider requesting that relevant international organizations, particularly OHCHR, through the establishment of a fully mandated country office, provide technical assistance, capacity-building and support in the following areas and to the following bodies:**

(a) **Administration of justice, including upholding safety standards in prison administration and instituting an appropriate complaints mechanism;**

(b) **Administrative reform and governance standards;**

(c) **Human rights in the peace process;**

(d) **The mining department, including in specialized areas such as geology;**

(e) **Members of Parliament, including on business and human rights.**

Annex

Proposed joint SR-Government benchmarks

Constitutional, legislative and judicial reform

(i) Initiate, by March 2018, a process of consultation with all stakeholders on the review and amendment of the Constitution, to bring it into line with international standards.

(ii) Undertake, by October 2017, a comprehensive review of legislation and legal provisions that limit fundamental freedoms and contravene international standards including those previously identified by the Special Rapporteur and the previous mandate holders (see Annex A/HRC/31/71), with clear target dates for the conclusion of the review.

(iii) Establish, by October 2017, a legislative reform process with clear timelines on the drafting and review of amendments to existing legislation or new draft bills by October 2017. The timeline should allow for the full consideration of the proposed laws.

(iv) Establish, by October 2017, an appropriate systematic consultation process on drafting and review of amendments to existing legislation or new draft bills to ensure transparency and adequate engagement by civil society organizations and members of the public.

(v) Establish a vetting mechanism to ensure amendments to existing legislation or new draft bills comply with international standards by October 2017.

(vi) Amend or repeal, by October 2017, section 18 of the Peaceful Assembly and Peaceful Procession Law and section 505 (b) of the Penal Code, drop all charges currently being brought against individuals under these provisions; and ensure that multiple charges are not brought against individuals for the same offence.

(vii) Amend or repeal the four "protection of race and religion" laws by October 2017.

(viii) Review and amend, by March 2018, the Citizenship Law (1982) to bring it into line with international standards; and, in particular, remove any provisions that provide for the granting of citizenship on the basis of ethnicity or race.

(ix) Resolve, by March 2018, the legal status of habitual residents of Myanmar, including former holders of the temporary registration card, and ensure that they have equal access to citizenship through a non-discriminatory process.

(x) Take concrete steps, by March 2018, to continue judicial reform and the capacity-building and training of judges and lawyers to strengthen the independence and effectiveness of the judiciary.

(xi) Enact, by March 2018, an overarching prison law which is in line with international standards, particularly in relation to the minimum standards of accommodation and access to health facilities.

Political Prisoners and Human Rights Defenders

(i) Cease immediately the arbitrary arrest and prosecution of those exercising their fundamental rights including their rights to freedom of assembly, association and expression.

(ii) Release all remaining political prisoners by October 2017.

(iii) Undertake, by October 2017, a comprehensive review of all cases, based on broad and public consultations with all relevant stakeholders in view of the discrepancies in the numbers of remaining political prisoners.

(iv) Develop, in consultation with all relevant stakeholders, including representatives of civil society, former political prisoners, representatives of the Ministry of Home Affairs, other relevant ministries and the National Human Rights Commission and parliamentarians, a formal definition of the term "political prisoner".

(v) Take concrete steps to provide adequate compensation and support, including psychological support and employment training, for released political prisoners by October 2017.

(vi) Establish, by October 2017, a system to prevent the surveillance and monitoring of civil society and human rights defenders.

(vii) Investigate and redress systematically any threats, acts of intimidation or harassment against media and civil society actors.

Rights of minorities, women and children

(i) Publicly condemn all acts of incitement to discrimination, hostility and violence against minorities, while upholding freedom of expression.

(ii) Take concrete steps to implement, by October 2017, a comprehensive set of measures to combat and prevent acts of incitement to discrimination, hostility and violence against minorities, including an anti-discrimination law or policy, while upholding internationally recognized human rights standards.

(iii) Undertake, by March 2018, holistic prevention, education and awareness-raising measures addressing the root causes of discrimination, and promote interfaith and intercommunal dialogue.

(iv) Enact, by October 2017, a law on the prevention of violence against women that is compliant with international law.

(v) Take more effective measures to prevent and respond to all forms of sexual and gender-based violence, including in conflict.

(vi) Take concrete steps to develop, by March 2018, a programme of comprehensive support for victims and survivors of sexual and gender-based violence in conflict, including access to justice, health and psychosocial care, and socioeconomic support, and take the necessary steps to ensure that perpetrators are prosecuted and convicted.

(vii) Take concrete steps to create, by March 2018, a system for the collection of disaggregated data on all forms of gender-based violence in order to measure the scope and scale of the problem.

(viii) Ratify, by October 2017, the ILO Convention 138 on the Minimum Age of Employment.

(ix) Incrementally increase the age of compulsory education from 10 to at least 14 years.

Peace process and conflict-related issues

(i) Ensure greater participation of women in the peace process, including in delegations, particularly in leadership roles, with a minimum quota of 30 per cent going forward and integration of a gender perspective into political dialogues.

(ii) Ensure the full participation of local and affected communities, civil society organizations and women in the peace process, including at the State level and in implementation and monitoring mechanisms.

(iii) Ensure prompt, independent and impartial investigations into allegations of violations committed in conflict areas, and the prosecution and punishment of all perpetrators.

(iv) Ensure, by March 2018, the cases of members of the military who perpetrate serious crimes against civilians are systematically transferred to civilian courts.

(v) Ensure that complainants are not penalized or threatened with legal action for bringing complaints and seeking redress against violations committed by the military.

(vi) Immediately ensure that the United Nations and its partners have regular, independent and predictable access to all those in need of humanitarian assistance, wherever they are located.

(vii) Conduct, by October 2017, a full verification count of all underage soldiers and ensure their release.

(viii) Take concrete steps to end child recruitment in the armed forces, by March 2018, through strengthened age determination process in recruitment procedures, the improved enforcement of existing accountability, unhindered access and independent monitoring and oversight of all armed forces.

(ix) Cease immediately the use of landmines and scale up the clearance of mines and unexploded ordnance, marking and fencing activities.

(x) Develop, by March 2018, a strategy and timeline for comprehensive mine mapping and removal.

(xi) Institute, by March 2018, systematic mine risk and education activities for communities in affected areas.

(xii) Ratify, by October 2017, the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction; prioritize the clearance of landmines and unexploded ordnance.

Rakhine

(i) Grant immediate access for humanitarian actors to northern Rakhine State, to undertake a needs assessment and continue delivering assistance and aid, as well as ensure that the protection, needs and well-being of affected populations are urgently and properly addressed.

(ii) Conduct a full, independent and impartial investigation to address allegations of serious human rights violations in Rakhine and hold perpetrators to account.

(iii) Lift, by October 2017, the curfew order and restrictions on freedom of movement in Rakhine State.

(iv) Review and revise, by March 2018, all local orders, instructions and other policies and practices that are discriminatory in law and in practice.

(v) Take concrete steps, by March 2018, to address long-standing challenges to social and economic development through a human rights-based approach, while ensuring the participation of the communities affected, and fostering reconciliation and greater integration between communities.

ESCR and rights related to land

(i) Ensure, by October 2017, that environmental impact assessment procedures are consistently implemented and enforced, and ensure that all relevant information is freely and easily accessible.

(ii) Put in place, by October 2017, a mechanism for participatory, inclusive and meaningful consultations with the communities on all development projects and the proper consideration of all comments received.

(iii) Take concrete steps to review, by March 2018, legislation, regulations and agreements governing extractive industries and major development projects to ensure they include transparency requirements and environmental, social and human rights protection.

(iv) Draft, by March 2018, following consultations with civil society and affected populations, an overarching land law which complies with international standards.

(v) Streamline, by October 2017, the complaints procedure regarding land disputes and ensure information on the process is widely disseminated to guarantee non-duplication and prevent gaps.

(vi) Ensure, by October 2017, access to adequate health, education and other basic services for all, particularly in Rakhine State, without discrimination.

Engagement with international human rights mechanisms

(i) Expedite the establishment of an OHCHR country office in Myanmar with a full mandate.

(ii) Ratify, by October 2017, the International Covenant on Economic, Social and Cultural Rights.

(iii) Ratify, by October 2017, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

(iv) Ratify, by March 2018, the International Covenant on Civil and Political Rights, and all other core international human rights instruments.